

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL LEE HOLMES, aka  
JAMES L. DAVIS,

Petitioner,

vs.

J. VALADEZ, Acting Warden,

Respondent.

No. C 02-4566 JSW (PR)

**ORDER DENYING  
CERTIFICATE OF  
APPEALABILITY**

(Docket no. 25)

Petitioner, a state prisoner, has filed a notice of appeal from this Court's judgment, entered September 20, 2005, denying the petition for writ of habeas corpus on the merits. The Court construes the notice of appeal as also requesting certificate of appealability pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b).

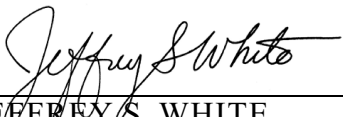
A judge shall grant a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner has not demonstrated "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, the request for a certificate of appealability is DENIED (docket no. 25).

The Clerk of Court shall forward this order, along with the case file, to the United States Court of Appeals for the Ninth Circuit from which Petitioner may also seek a

//

1 certificate of appealability. *See United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir.  
2 1997).

3 DATED: November 21, 2005

4   
5 JEFFREY S. WHITE  
6 United States District Judge  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28